

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
MYRON CORP.,	:
	:
Plaintiff	:
	:
v.	:
	:
HOLLAND USA, INC D/B/A AMSTERDAM	:
PRINTING,	:
	:
Defendants.	:
	:
-----X	

Case No. 07-CV-6877 (PAC)

**DECLARATION OF MARIO AIETA IN SUPPORT OF DEFENDANT'S
MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION**

I, MARIO AIETA, declare under penalty of perjury:

1. I am a partner of the law firm of Fross Zelnick Lehrman & Zissu, P.C., counsel for Defendant in this action. I make this declaration, based upon my own personal knowledge and my review of the documents annexed as exhibits hereto, in opposition to Plaintiff's Request for a Preliminary Injunction.

2. I reviewed all of the materials produced by Myron, which included, among other things, a number of product samples and catalogs. Although Myron also does a small amount of print media advertising, it has failed to comply with defendant's request for samples of that advertising and should not be permitted to rely on that advertising for any purpose at the preliminary injunction hearing.

3. Myron sells products containing the word TEAMWORK and the phrase "Together we achieve the extraordinary" without the "two silhouetted mountain climbers ascending a peak." Examples of those products and/or catalogs showing those products are attached as Exhibit A and will be submitted to the Court at the preliminary injunction

hearing.

4. Attached as Exhibit B is a copy of a letter of the type sent by Myron to customers and prospects with samples of the Myron calendars. This document was produced by Myron in response to defendant's request for documents concerning Myron's advertising or promotion of its claimed trade dress.

5. Attached as Exhibit C is a printout of a page from Myron's website. This page also was produced by Myron in response to defendant's request for documents concerning Myron's advertising or promotion of its claimed trade dress, numbered Myron 0157.

6. Attached as Exhibit D is a printout of a page from Myron's website. A similar page, containing the same text, also was produced by Myron in response to defendant's request for documents concerning Myron's advertising or promotion of its claimed trade dress, numbered Myron 0161.

7. Numerous other makers of motivational products also have used the word TEAMWORK, motivational phrases like "Together we achieve the extraordinary," and images of mountain climbers on many different products over the years. Attached as Exhibit E are true and correct copies of web printouts of four posters containing the word TEAMWORK and motivational phrases. Attached as Exhibit F are printouts of several web pages offering calendars containing the word TEAMWORK. Additional samples of those uses will be submitted to the Court at the hearing on September 27, 2007.

8. Myron's current Teamwork Peak products feature the mark POCKET PAL® prominently on the first page of the pocket calendar. Attached as Exhibit G is a true and correct copy of the first page of Plaintiff's calendar.

9. One of the documents produced by Defendants was identified as the log Mr. Probert maintains of competitors' products that he receives. One of the entries states:

“Sample received (Probert Associates) of a TEAMWORK (and slogan) diary depicting “geese flying in formation” on June 16th (home) and brought to the attention of Myron senior management on 6/18/07. Sample was sent to outside counsel.”

A subsequent entry in Mr. Probert’s log states:

Amsterdam WEB site was reviewed on 6/23/07. It was found that they were selling BOTH a “mountain climber” and a “geese in formation” version of the TEAMWORK cover.

As the underlying documents are marked confidential, they are not attached hereto in the interest of expediency.

10. Myron waited forty-three days after the date indicated on Mr. Probert’s log in which it became aware of Holland’s product before it filed the complaint in this action. Myron did not send a demand letter to Holland before filing its complaint. Myron then waited another forty-one days before asking this Court for a preliminary injunction.

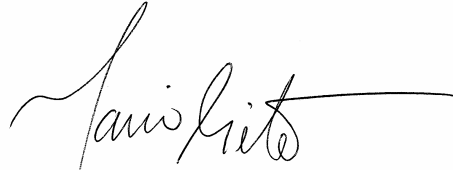
11. At my request a google search was conducted on September 21, 2007, for the phrase “together we achieve the extraordinary.” Attached hereto as Exhibit H is the first page of the search results. Attached hereto as Exhibit I are printouts of the home pages of several of the websites referenced in the google search.

12. Attached hereto as Exhibit J is an excerpt from the file wrapper for United States Patent and Trademark Office Reg. No. 2297367.

13. Myron’s current product does appear either with TM or ®. Attached as Exhibit K is a true and correct image of one of Myron’s calendars. (The calendar has been marked as Deposition Exhibit 19.)

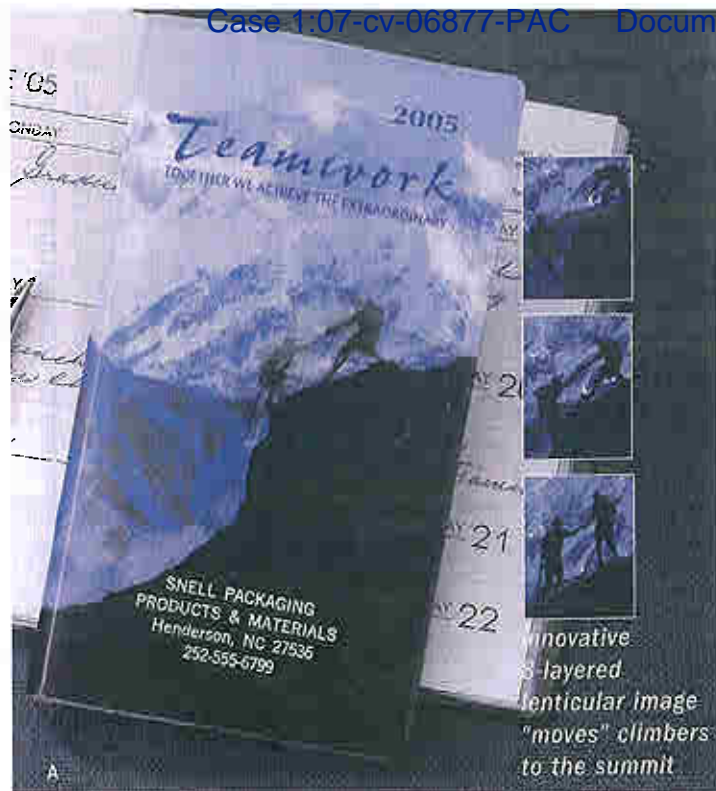
14. Attached as Exhibit L is a true and correct copy of the transcript of Patrick Caillat, taken on Sept. 19, 2007.

I declare under laws of perjury of the United States of America that the foregoing is true and correct and this declaration was executed on September 24, 2007 at New York, New York.

A handwritten signature in black ink, appearing to read "Mario Aieta", is written over a horizontal line.

Mario Aieta

EXHIBIT A

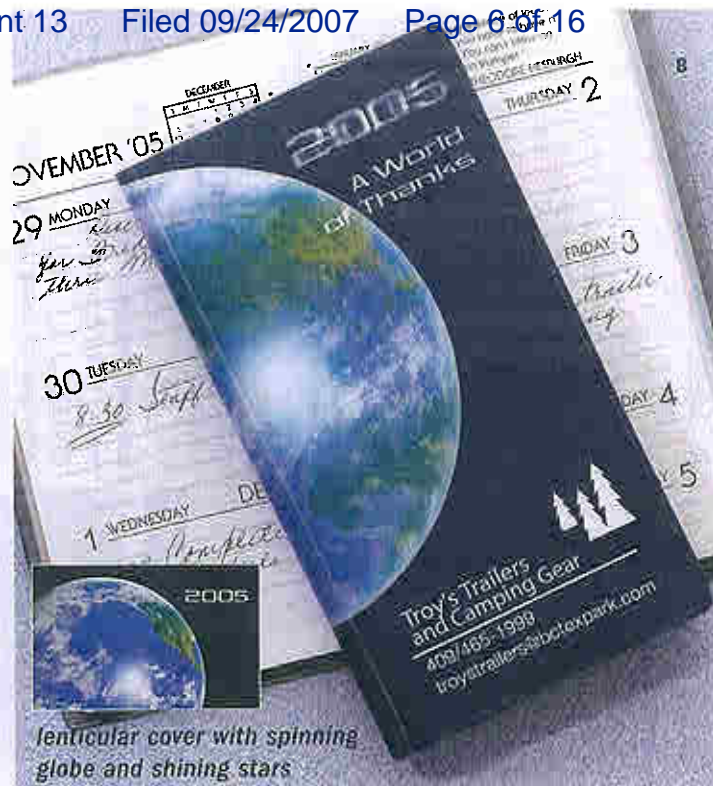
**A. Teamwork-in-Motion 200 Atlas Diary**

Put Teamwork in motion. Using a unique printing technology that creates the illusion of motion, our Teamwork-in-Motion diary helps the teamwork climbers reach the top. Includes week-in-view and 16-page full-color atlas. Add your name in white to wraparound color vinyl cover. 6" x 3½".

XE3-5Z00401

50 min.	100	250	500	1000
\$3.75	\$3.22	\$2.99	\$2.79	\$2.57

4 lines/24 characters per line

**B. World In Motion™ Diary**

Watch the world turn as you look up your appointments. This eye-catching lenticular cover makes a spectacular impression as the world turns and stars twinkle. White imprint. 6" x 3½".

XE3-5Z18301

50 min.	100	250	500	1000
\$3.75	\$3.22	\$2.99	\$2.79	\$2.57

4 lines/24 characters per line

C. Date Log® Monthly Calendars

View a month at a time with this perennial favorite. Each day has ample space to write notes and appointments. Contains all kinds of useful information like business/travel toll-free numbers and Web sites, area codes, 2005-2006 holidays, and first-aid tips. In a selection of lustrous metallic and holographic foils or in full color. Sturdy and laminated with crisp foil imprint. Fits neatly in a portfolio or briefcase. 7" x 10"

Teamwork II 200 XE3-5Z16903
Patriotic XE3-5Z05803
Classic Black XE3-5106D03
Woodgrain XE3-552GD05
Classic Blue XE3-510GD31

25 min.	50	100	250	500	1000
\$4.61	\$3.54	\$2.79	\$2.57	\$2.36	\$2.14

4 lines/30 characters per line

MYRON 0110

teamwork II



patriotic



premiere



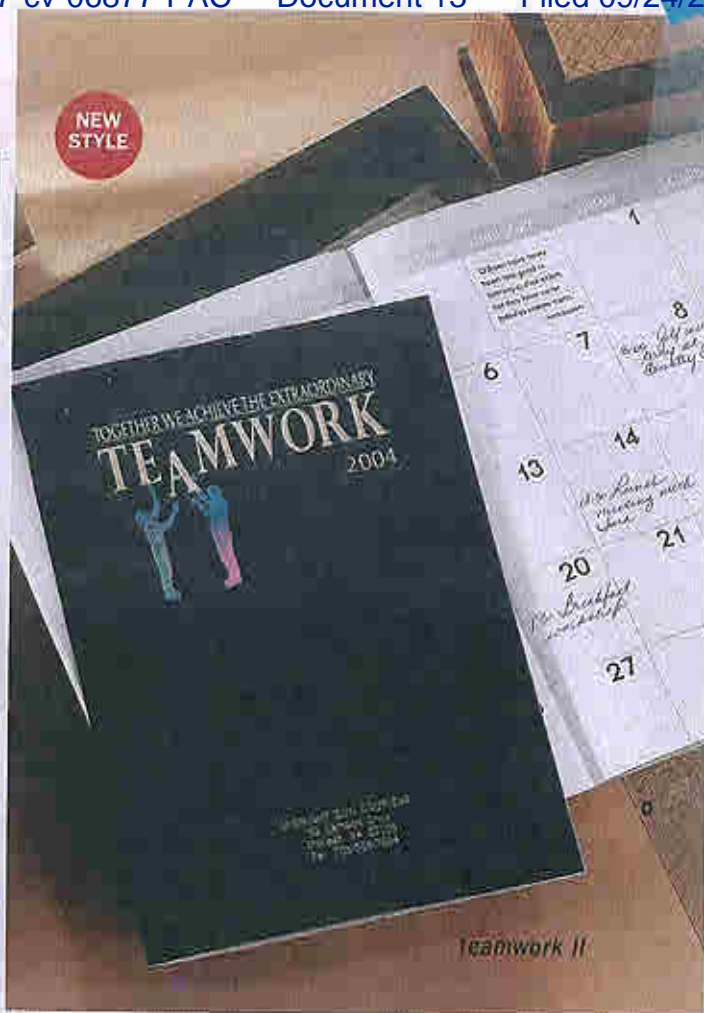
sterling



regency



fantasia/teamwork II

NEW
STYLETOGETHER WE ACHIEVE THE EXTRAORDINARY
TEAMWORK
2004

teamwork II

I'm amazed at how many ways our customers have customized our Diaries to send the right message about their company.

—Mike Adler,
Owner and Founder

D. Date Log® Monthly Calendars

View a month at a time with this perennial favorite. Each day has ample space to write notes and appointments. Contains all kinds of useful information like business/travel toll-free numbers and web sites, area codes, 2004-2005 holidays, and first aid tips. In a selection of lustrous metallic and holographic foils or in full color. Sturdy and laminated with crisp foil imprint. Fits neatly in a portfolio or briefcase. 7" x 10".

NEW Teamwork II 200	XB9-5Z16953
Patriotic	XB9-5Z05853
Premiere 200	XB9-5TCGD53
Sterling 200	XB9-5S8GD53
Regency 200	XB9-5S9GD81
NEW Fantasia 200	XB9-5Z22453

25 min.	50	100	250	500	1000
\$4.61	\$3.54	\$2.79	\$2.57	\$2.36	\$2.14

4 lines/30 characters per line

Choose from two kinds of month-in-view convenience — Date Log® or Slim Jim®

NEW
STYLE

mikado

windsor

MYRON 0105

E. Slim Jim® Monthly Pocket Calendars

Present clients and employees with ultimate convenience. Our Slim Jims easily slip inside a pocket, and show a whole month of appointments on one page. Choose either Windsor or Premiere styles in textured black vinyl or select one of our other economical Slim Jim® styles. 6" x 3 1/4".

NEW Premiere 300 XB9-5Z17490

50 min.	100	250	500	1000
\$2.46	\$2.03	\$1.81	\$1.71	\$1.60

4 lines/30 characters per line

Windsor 500 XB9-505A190

50 min.	100	250	500	1000
\$3.22	\$2.84	\$2.56	\$2.36	\$2.19

4 lines/30 characters per line

NEW Teamwork II 200 XB9-5Z21953

NEW Patriotic 200 XB9-5Z22053

NEW Sterling 200 XB9-5Z21753

NEW Regency 200 XB9-5Z23051

NEW Mikado 200 XB9-5Z22155

50 min.	100	250	500	1000
\$4.49	\$3.39	\$1.25	\$1.19	\$1.15

4 lines/30 characters per line



www.myron.com

call 1-800-52-MYRON (526-9766)

fax 1-800-646-1443

13

Myron 2000

CALL YOUR COMMUNICATION SPECIALISTS

ORDER BY PHONE: (201) 843-6796 or

24-HOUR FAX: (201) 843-8390 or

VISIT OUR WEBSITE: www.myrononline.com



a

a. Teamwork Peak 500 Pocket Pal™ Diary

Achieving new heights of success is a team effort, and cause for celebration. Inspire customers to join your team with our top selling diary. Gilt-edged pages, goldtone corners.

#5D3AD90

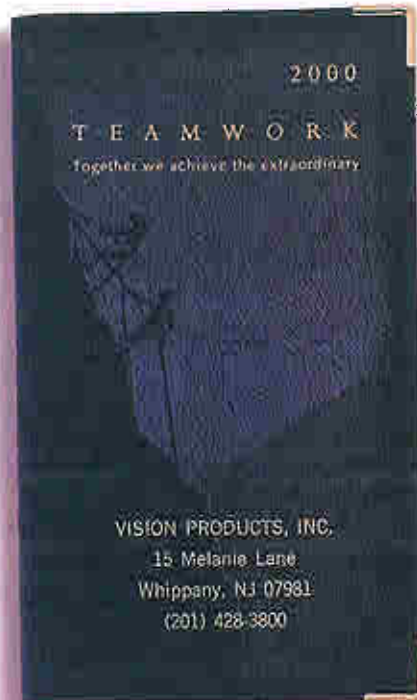
50(min)	100	250	500	1000
\$3.08	\$2.65	\$2.40	\$2.24	\$2.09

b. Teamwork 500 Pocket Pal™ Diary

"Together we achieve the extraordinary™" and our mountain climbers combine to encourage a spirit of cooperation. Your company imprint is stamped in gold foil. Gilt-edged pages, goldtone corners.

#53GAD90

50(min)	100	250	500	1000
\$3.08	\$2.65	\$2.40	\$2.24	\$2.09



b

IMPRINT INFORMATION

Prices stated are per calendar cost and include your imprint in gold - maximum 4 lines, 30 characters per line. Add \$6.50 machine set-up charge. Special quotation for quantities over 1000. Logos available at one-time die charge of \$29.50. Shipping charges additional F.O.B. (N.J. factory).

new

c. Team Spirit 500 Pocket Pal™ Diary

Show your customers that your team is ready to work with theirs to make things happen! The cover displays our popular Teamwork theme and your company message in gold for year-long visibility. Gilt-edged pages, goldtone corners. 3 1/2" x 6."

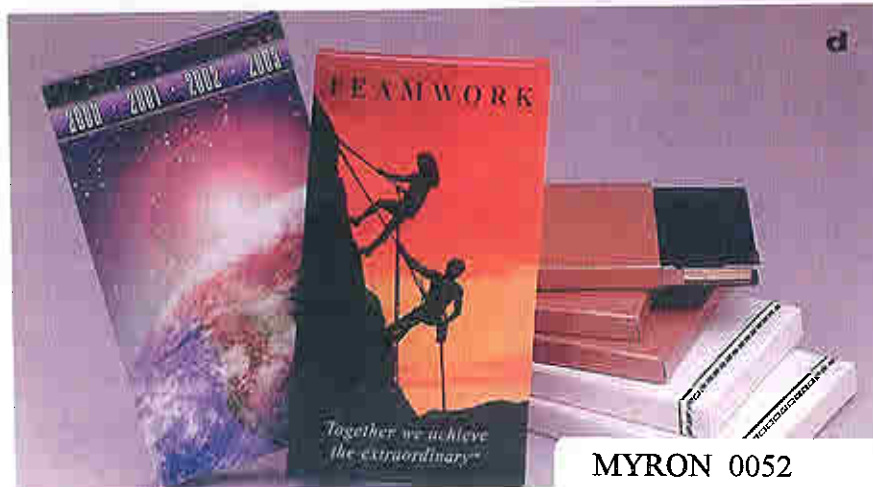
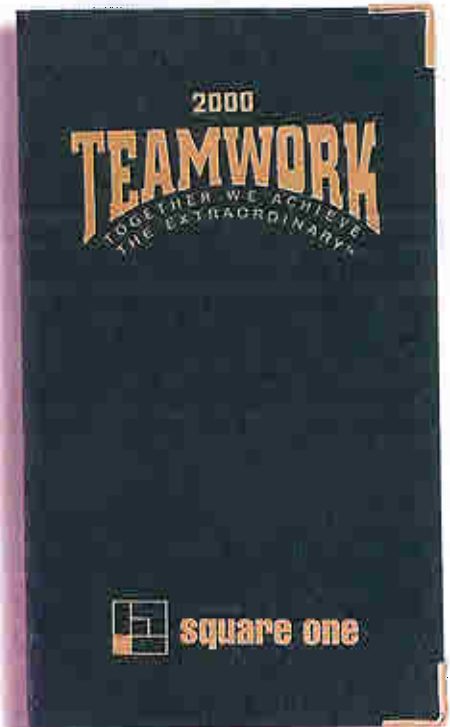
#5K6AD90

50(min)	100	250	500	1000
\$3.08	\$2.65	\$2.40	\$2.24	\$2.09

specialists

Our communication specialists can help you target your message!

c



d

d. Gift Boxes for all Pocket Pal™ Diaries

Your business presentations are impactful. Make your gift presentations just as impressive with deluxe gift boxes. Perfectly sized for our pocket diaries, these high-quality boxes add a distinctive, finishing touch to your gift giving. Choose from:

Golden Gift Boxes

#5910023 \$0.20 ea.

Teamwork Gift Boxes

#5910203 \$0.20 ea.

Blue White Dated Box with Gift Card

#5910008 \$0.35 ea.

Millennium Gift Box

#591J301 \$0.35 ea.

Millennium Portfolio Diary Box

#591I301 \$0.35 ea.

EXHIBIT B

MYRON
205 Maywood Avenue
Maywood, New Jersey 07607
Phone: 1-800-537-2819
Fax: 1-800-753-7043
www.myron.com

Myron
The Standard
For Architectural Gifts

July 2004

**Limited Time Only
One LOW Price
\$1.79 Each!**



** ALL FOR ADC 07099
4452-A
Barbara De Guzman
205 Maywood Avenue
Maywood, NJ 07607-1007

Good Morning,

Surprised to see the Barbara De Guzman name on the enclosed 2 In 1 Teamwork Peak 200 Atlas Diary sample? Looks impressive, doesn't it!

Sized to fit any pocket, this indispensable companion features a week-in-view calendar and a handy 16-page, full-color U.S. road atlas. The stylish black crush cover includes a built-in sleeve to hold the matching slim-profile ballpoint pen with convenient one-handed plunger action.

As your customers, prospects, employees and associates record appointments, jot down frequently called numbers or check the atlas, your company's name and address, *imprinted in gold*, will be seen time and time again, and your commitment to teamwork will be reinforced every day.

A New Diary With Full-Color Atlas At Breakthrough Prices!

Order now and you will get this great advertising tool at **ONE LOW PRICE OF JUST \$1.79 PER DIARY FOR ANY QUANTITY SHOWN!** And when your order is received within the next 30 days, I'll include a Bonus ...

A Free Teamwork Peak Gift Box With Every Diary You Order!

Everything you purchase from Myron is backed by my unconditional guarantee – you must be totally satisfied or your money back. Don't miss this special opportunity to keep in touch with customers 365 days a year – at introductory savings. Order today.

Cordially,

Mike Adler
Mike Adler
Owner/Founder

P.S. This offer is limited to new customers and expires in 30 days, so act now!



Order Now – Pay ONE Low Price ... Just \$1.79 each!

☒ OKAY MIKE! HERE'S MY ORDER!

1. 2 In 1 Teamwork Peak 200 Atlas Diary #5216340B

Regular Price	\$3.54	\$2.99	\$2.79	\$2.57	\$2.36
Special Price	\$1.79 ea.	\$1.79 ea.	\$1.79 ea.	\$1.79 ea.	\$1.79 ea.

2. Select one imprint option: (a, b or c)
There is an \$8.95 machine set up charge for all imprinted orders.

(a) ☐ Imprint per enclosed sample: (as shown below)

Compliments of
BARBARA DE GUZMAN
Maywood, NJ 07607

(b) ☐ Change my imprint to: (Please print or type clearly.)
Four line imprint approx. 21 characters per line including spaces.

1. If "Compliments of" is desired please write in on line 1 above.
2. _____
3. _____
4. _____
Most customers use this line of imprint for e-mail, website or phone number.

(c) ☐ No Imprint desired.

☐ Use my logo for an imprint
\$35.50 one-time charge for custom logo, lettering or special characters;
include black and white artwork, no shading, photocopies or faxes.

☒ FREE GIFT: Teamwork Peak Gift Box # P610203

3. Method of Payment: Shipping and handling additional. FOB NJ Factory

☐ Check Enclosed ☐ Bill Account (not 30 days in O&B retail store)
☐ VISA ☐ American Express ☐ MasterCard ☐ Discover

Card Number _____ Expiration Date _____

Signature _____ (All orders must be signed) Date _____

Title _____ E-Mail _____

Telephone _____ *Fax _____
*Fax number required to send you a FREE paper proof of your order.

QSN# P5000302
Barbara De Guzman
205 Maywood Avenue
Maywood, NJ 07607-1007
Cannot ship to P.O. Box, USA street address required, make corrections above.

TO ORDER BY PHONE, CALL: 1-800-537-2819 OR FAX 1-800-753-7043
MYRON, 205 Maywood Avenue, Maywood, New Jersey 07607

We are not responsible for typographic errors that may appear in this letter. This offer is subject to modification or withdrawal without prior notice.

MYRON 0165

EXHIBIT C



Welcome to the Myron US web site

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Hello, sign in to access your account. New customer? Sign up for special offers!

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[Pocket Calendars](#)

[Pocket Tools](#)

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Desk Calendars

We've designed a full line of calendars. Many also include a convenient pen. Plus themes that match your company's character, from Teamwork to World of Thanks. You can even add your company logo. Bottom line, there's no better way to get your name before customers on a daily basis!

Teamwork Peak Blue Mountain Date Log®



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MYRON 0157

EXHIBIT D



Welcome to the Myron US web site

- WELCOME
- DESK CALENDARS
- HOLIDAY CARDS
- POCKET CALENDARS
- SPECIALTY PRODUCTS
- WRITING INSTRUMENTS

Hello, sign in to access your account. New customer? Sign up for special offers!

Teamwork Spinner Key Ring TD25930

SEARCH

Go

PRODUCTS

- Calculators & Electronics
- Desk Calendars
- Exclusive Collection
- Gift Boxes
- Holiday Cards
- Pocket Calendars
- Pocket Tools
- Specialty Products
- Bags
- Drinkware
- Key Rings
- Magnets
- Notepads
- Other Products
- Writing Instruments

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Click to Enlarge

Sturdy key ring with spinning tab shows that your organization stands behind America. Your laser-engraved imprint goes on back of a Teamwork theme, Chrome-plated steel, 1-1/2 x 3/4. Imprint: 4 lines of 12 characters per line.

Personalize It

Buy it

Contact me

Quantity:

150

Availability Date: 02/25/2008 Additional Information

refresh

Back

Enter your personalized message:

Line 1:

Line 2:

Line 3:

Line 4:

(15 Characters Max)

Logo: ☐ Select a logo:

☒ No personalization for this area

Buy it

Quantity	Your Special Price
50	\$2.65
100	\$2.49
250	\$2.30
500	\$2.15
1000	\$1.99

Pricing is in U.S. Dollars.





Welcome to the Myron US web site

[My Account](#) | [View Cart](#) | [Help](#)



Hello, sign in to access your account. New customer? Sign up for special offers!

22 item(s) matching your description

SEARCH

Displaying records 10 to 18 of 22



Enter your
Quick Service Number
or special code:



PRODUCTS

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[Writing Instruments](#)



Teamwork Spinner Key Ring

Sturdy key ring with spinning tab shows that your organization stands behind Ameri Teamwork theme. [More Info](#)

[Show me more items like this](#)



Teamwork Peak Duo Pocket Pal™

Reward employees and customers with the ultimate in functionality Pocket-sized bla unlined notepad and our 2008 atlas/diary. [More Info](#)

[Show me more items like this](#)



2 In 1 Teamwork Peak Multi Writer Pocket Pal&trad

Enjoy the convenience of two clip pens that both fit in a handsome black crush vinyl

[Show me more items like this](#)



Teamwork Peak Blue Mountain Date Log

A good thing just got better! Our best selling Teamwork Together We Achieve the E: blue and gold. [More Info](#)

[Show me more items like this](#)



Teamwork Peak Blue Mountain Duo Date Log

A good thing just got better! Our best selling Teamwork Together We Achieve the E: blue and gold. [More Info](#)

[Show me more items like this](#)



Teamwork Peak Blue Mountain W/ Magnetic Closure

The magnetic strap closure makes this one a keeper! It has our new Teamwork desi whole package fits right in your pocket!. [More Info](#)

[Show me more items like this](#)



2 In 1 Teamwork Peak Blue Mountain Duo

This 2 in 1 has our new Teamwork design in blue along with the matching bookmark the calendar/diary, the whole package fits right in your pocket! Custom art imprint :

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MYRON 0161



CANADIAN CUSTOMERS
click here



Teamwork Peak Pocket Pal Gift Box

The perfect fit and presentation for all of our Teamwork Peak Pocket Pal™ Diaries m
[More Info](#)

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2 In 1 Teamwork Peak Burgundy Mountain

This 2 in 1 has our new Teamwork design in burgundy along with the matching boot
whole package fits right in your pocket! Custom art imprint area measures 15 (H) x

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[<](#) [1](#) [2](#) [3](#) [Next Page >>](#)

MYRON 0162